

Report of the Hearing Officer and Recommendation On the Proposed Rule for Determining Sales and Use Tax Priority in Leasing Transactions

Executive Summary

On June 16, 2004 a number of states participated in an informational teleconference to discuss the draft Proposed Rule for Determining Sales and Use Tax Priority.

Informational Session

During a discussion of the proposal, Utah expressed concerns over the wording in Rule Nos. 2 and 4. In Rule #2, it appeared on first reading that the proposal forces a state to employ the IRS MACRS standard for determining asset value, which otherwise might not reflect current law. It was explained that the use of the MACRS standard was appropriate where the asset value cannot be determined. In Rule #4, where it appeared that the subsequent state would be forced to collect less tax than may be owed. To make the intent of the rule clearer, that provision has been restated in the form of a credit.

Written Comments

An additional written comment was received after the public hearing but before the period for submitting written comments had expired.

The General Electric Capital Corporation (GECC) expressed concern that 1) it is not clear to which taxes the proposal is meant to apply; and 2) that the credit should be available regardless of whether the lessor or lessee bears the legal incidence of the tax. In answer to the first concern, the proposal is meant to apply to all transaction-type taxes, without regard to what the tax may be termed in that state. The Hearing Officer believes that use of the term "transaction-type" adequately addresses that concern, even though the term is not defined in the proposal. As for the second concern, the credit is indeed meant to be available regardless of the legal incidence of the tax, as particularly illustrated by Rule #2's Example C.

GECC's comments also include the suggestion that rather than constructing an elaborate system of credits, it might be better to develop a principle of fair allocation that reflects the reality of the leasing industry and the fact that some properties move often from jurisdiction to jurisdiction. The letter also suggests that the only way double taxation can be completely eliminated is if all states impose its tax on the same taxable event. The Hearing Officer does not disagree with the sentiments expressed, and suggests the former could be taken up at a later time.